

RECORDATION NO. 12942-A

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INTERSTATE COMMERCE COMMISSION

**ASSIGNMENT OF PURCHASE AGREEMENT**

**DATED AS OF FEBRUARY 17, 1981**

**Between**

**WANDA PETROLEUM COMPANY  
as Assignor**

**and**

**WELLS FARGO EQUIPMENT LEASING CORPORATION**

ASSIGNMENT OF PURCHASE AGREEMENT dated as of February 17, 1981 Between WANDA PETROLEUM COMPANY, a Texas corporation (hereinafter called the Assignor), and WELLS FARGO EQUIPMENT LEASING CORPORATION, a California corporation (hereinafter called the Assignee).

WHEREAS, the Assignor has entered into a contract dated as of November 30, 1979 (hereinafter called the Purchase Agreement) with ACF Industries Incorporated (hereinafter called the Builder), pursuant to which the Builder has agreed to manufacture, sell and deliver to the Assignor the units of railroad equipment described in Schedule A hereto (hereinafter called the Items); and

WHEREAS, the Assignor desires to assign its rights with respect to the Items under the Purchase Agreement to the Assignee and when the Items are delivered under the Purchase Agreement to lease them from the Assignee pursuant to a Lease Agreement dated as of the date hereof (hereinafter called the Lease);

NOW THEREFORE in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Assignor and the Assignee agree as follows:

1. The Assignor hereby sells, assigns, transfers and sets over unto the Assignee, and its successors and assigns, all of the Assignor's right, title and interest in and to the Items and the Purchase Agreement (insofar as it relates to the Items).

2. The right, title and interest assigned pursuant to Section 1 hereof, shall include, but shall not be limited to: (i) the right to accept delivery of the Items pursuant to the Purchase Agreement and to take title to the Items pursuant to a bill of sale from the Builder; and (ii) all claims for damages arising from any failure of the Builder to perform or observe any of the Items of the Purchase Agreement and all rights, benefits and claims under all warranties contained in the Purchase Agreement and any other amounts which may become payable by the Builder under the Purchase Agreement.

3. Anything contained herein to the contrary notwithstanding: (i) the Assignor shall at all times remain liable to the Builder under the Purchase Agreement for the performance of all its duties and obligations thereunder to the same extent as if this Assignment had not been executed; (ii) the exercise by the Assignee of any of the rights assigned to it hereunder shall not release the Assignor from any of its duties or obligations to the Builder under the Purchase Agreement.

4. The Assignor agrees that at any time and from time to time, upon written request of the Assignee, the Assignor will promptly execute and deliver any such further instruments and documents and take such further actions as the Assignee may reasonably request in order to obtain the full benefits of this Assignment and of the rights assigned hereby.

5. The Assignor represents and warrants that: (i) the Purchase Agreement is in full force and effect and is enforceable in accordance with its terms; (ii) the Assignor is not in default thereunder, (iii) the Assignor has not heretofore assigned or pledged the whole or any part of the rights assigned hereby to the Assignee; (iv) none of the Items has been delivered by the Builder under the Purchase Agreement; and (v) the Assignor has made no payments to the Builder in respect of the Items or any of them. The Assignor covenants and agrees that so long as this Assignment shall remain in effect, it will not assign or pledge the whole or any part of the rights assigned hereby.

6. The only obligation or liability of the Assignor under the Purchase Agreement assigned hereby to the Assignee is the obligation to pay the purchase price, as provided in the Purchase Agreement, for any Items delivered and accepted under the Purchase Agreement; provided however that the Assignee shall have no obligation or liability to purchase or pay for any Item which shall not have been delivered to and accepted by the Lessee on or before June 30, 1981, for any Item if the aggregate Delivered Cost for such Item and any Items theretofore delivered and accepted shall exceed \$1,000,000, or for any Item with respect to which one or more of the other conditions set forth in the Lease shall not have been satisfied.

7. In the event that the Assignee shall, pursuant to the proviso to Section 6 hereof, not theretofore have purchased and paid for any Items, the Assignee shall on June 30, 1981 either waive (conditionally, partially or absolutely) the conditions which have not been satisfied or reassign to the Assignor its rights under this Assignment relating to the Items not theretofore delivered and accepted under the Purchase Agreement.

8. The Assignor agrees to cause this Assignment to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act.

9. This Assignment shall be governed by, and construed in accordance with, the laws of the State of California; provided however that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the Assignor and the Assignee have caused this Assignment to be executed by their duly authorized officers as of the date first above written.

(Corporate Seal)

Attest:

B. J. Arnold  
Asst Secretary

WANDA PETROLEUM COMPANY

By

R. A. Davis

Its

Sr. Vice President

(Corporate Seal)

Attest:

\_\_\_\_\_

WELLS FARGO EQUIPMENT LEASING CORPORATION

By

R. A. Davis

Its

Sr. Vice President

By

Don Walker

Its

Sr. Vice President

SCHEDULE A

DESCRIPTION OF THE ITEMS

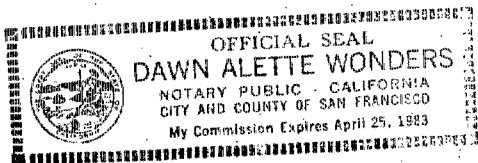
Thirteen (13) ACF Industries, Inc. 100 Ton Roller Bearing 33,500 Gallon  
Jumbo Pressure Tank Cars. (DOT Classification: 105A400W)

IDENTIFICATION NUMBERS:

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STATE OF CALIFORNIA        )  
                                      ) SS:  
COUNTY OF SAN FRANCISCO    )

On this 19th day of February, 1981, before me personally appeared Ronald E. Dean and Dale R. Walker to me personally known, who, being duly sworn, says that they are the Senior Vice President and Senior Vice President respectively, of WELLS FARGO EQUIPMENT LEASING CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of such corporation, that such instrument is the corporate seal of such corporation, that such instrument was signed and sealed on behalf of such corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.



Dawn Alette Wonders  
Notary Public

(Notarial Seal)

My commission expires: April 25, 1983

STATE OF TEXAS

COUNTY OF HARRIS

) SS:  
)

On this 18th day of February, 1981, before me personally appeared R. A. Davis, to me personally known, who, being duly sworn, says that he is a Sr. Vice President of WANDA PETROLEUM COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of such corporation, that such instrument is the corporate seal of such corporation, that such instrument was signed and sealed on behalf of such corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.

Debra M. Garrett  
Notary Public

(Notarial Seal)

My commission expires: **DEBRA M. GARRETT**  
Notary Public in Harris County, Texas  
My Commission Expires May 11, 1981

**CONSENT TO ASSIGNMENT**

**DATED AS OF FEBRUARY 17 1981**

**BY**

**ACF INDUSTRIES, INCORPORATED**



CONSENT TO ASSIGNMENT Dated as of February 17, 1981 by ACF Industries,  
Incorporated (hereinafter called the Builder)

11/30/19

WHEREAS, Wanda Petroleum Company, a Texas corporation (hereinafter called the Lessee) has entered into a contract dated as of \_\_\_\_\_, 198\_\_ (hereinafter called the Purchase Agreement) with the Builder pursuant to which the Builder has agreed to manufacture, sell and deliver to the Lessee the units of railroad equipment described in Schedule A to the Assignment (as hereinafter defined), which consist of 13 Jumbo Pressure Tank Cars (hereinafter called the Items);

WHEREAS, the Lessee is assigning to Wells Fargo Equipment Leasing Corporation, a California corporation (hereinafter called the Lessor) all its rights with respect to the Items under the Purchase Agreement pursuant to an Assignment of Purchase Agreement dated as of the date hereof (hereinafter called the Assignment); and

WHEREAS, the Lessee will lease the Items from the Lessor pursuant to a Lease Agreement dated as of the date hereof (herein called the Lease);

NOW THEREFORE, in consideration of the covenants contained in the Assignment, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Builder hereby agrees with the Lessee and the Lessor as follows:

1. The Builder hereby acknowledges receipt of a copy of the Assignment and consents to the assignment to the Lessor of the Lessee's rights with respect to the Items under the Purchase Agreement upon the terms and subject to the conditions contained in the Assignment.

2. The Builder agrees to manufacture and deliver the Items to the Lessor in accordance with the specifications set forth in or referred to in the Purchase Agreement.

3. The Builder hereby confirms to the Lessor that all representations, warranties, indemnities and agreements of the Builder in the Purchase Agreement shall inure to the benefit of, and shall be enforceable by, the Lessor to the same extent as if it had been originally named in the Purchase Agreement as the purchaser.

4. The Builder hereby agrees that it will not amend, modify or terminate any provision of the Purchase Agreement without the prior written consent of the Lessor.

5. The Builder hereby agrees that it will warrant to the Lessor that at the time of delivery of each Item pursuant to the Purchase Agreement the Builder has the legal title to such Item, free of all claims, liens, charges, security interests and other encumbrances, except the rights of the Lessee under the Lease, and that it will defend the Lessor's title to each Item against all claims by, through or under the Builder.

The Builder hereby confirms to the Lessor that the Lessee is not in default under the Purchase Agreement.

IN WITNESS WHEREOF, the Builder has caused this Consent to Assignment to be executed by its duly authorized representative as of the date first above written.

ACF INDUSTRIES, INCORPORATED

By

  
A. L. HUFF VICE PRESIDENT

(Corporate Seal)

STATE OF NEW YORK )  
 ) SS:  
COUNTY OF NEW YORK )

On this 19th day of February, 1981, before me personally appeared A. L. HUFF, to me personally known, who, being duly sworn, says that he is a VICE PRESIDENT of ACF INDUSTRIES, INCORPORATED, that one of the seals affixed to the foregoing instrument is the corporate seal of such corporation, that such instrument is the corporate seal of such corporation, that such instrument was signed and sealed on behalf of such corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.

Anthony M. Romanello  
Notary Public

(Notarial Seal)

My commission expires:

ANTHONY M. ROMANELLO  
Notary Public, State of New York  
No. 31-4703607  
Qualified in New York County  
Commission Expires March 30, 1981